XI-HC-78

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A.2340/2000 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Dhirendra Mishra.

CRIMINAL APPEAL No. 2340/ 2000.

APPELLANT : Andhu alias Sonu
S/o Birbal Chouhan
Aged about 48 years,
R/o Sonmunda,
District Raigarh, CG.

Versus

RESPONDENT : State of M.P. (Now CG)

Shri R.K. Jain Advocate for the accused/appellant.

Shri Sudhir Bajpai Dy. GA for respondent/ State.

(ORAL) JUDGMENT
{Dated 21-3-2007}

L.C. Bhadoo.J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 25.07.2000 passed by Additional Sessions Judge, Raigarh, in Sessions trial No. 130/1998 whereby he has been held guilty under section 302 of the Indian Penal Code for committing the murder of one Maheshram and sentenced to undergo imprisonment for life and pay fine of Rs. 1000/-, in default of payment of fine to further undergo RI for six months.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Case of the prosecution, in brief, is that deceased as also accused Andhu along with his wife Rajkumari who happens to be the sister of the deceased, were residing in the same house. Kejabai and Mamta were also residing in that house. On 28.4.1998 at about 8 p.m. Tej Singh and Mahesh were taking meal in the house of Tejsingh, at that time accused Andhu came and asked Mahesh to accompany him to his house for taking food. In the meanwhile, he asked his daughter Laxmibai PW-8 to bring a quarter of liquor. Thereafter, accused Andhu, deceased Mahesh and Tejsingh consumed liquor and after taking liquor Andhu and Mahesh started quarreling. Mahesh brought axe from his house and attempted to attack accused Andhu. Kejabai intervened but accused Andhu snatched the axe from Mahesh and attacked him with it on his head, as a result of which, he fell down. Thereafter, accused by sitting on the chest of Mahesh pressed his chest by a piece of wood and gave him beating as a result of which Mahesh died. Merg intimation Ex. P-22 was given by one Keshav Prasad on 29.4.1998 in police station Kotwali. PW-10 Hirabai was informed about the incident by Mamta, Kejabai and Mahesh and the same was reduced in to writing under Ex. P-12 which was signed by the people of vicinity i.e. PW-5 Santosh, PW-6 Ramnath and PW-7 Kartikram. PW-13 Naveen Kumar Nande registered the Merg No. 39/1998 and after giving notice Ex. P-1 to the Panchas, he prepared inquest report Ex. P-2 on the dead body of Mahesh. Thereafter, dead body was sent for post mortem examination to Government Hospital, Raigarh where Dr. P.K. Patel PW-11 conducted the post mortem and prepared the post mortem report

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(22)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ex. P-20 in which he opined that cause of death was injury on the occipital region and fracture of occipital bone. On 1.5.1998 while in police custody the accused gave memorandum Ex. P-11 and in pursuance thereof one axe was seized under Ex. P-4 and one white colour vest (Baniyan) was seized under Ex. P-5.

After completion of investigation, the charge sheet was filed in the Court of Chief Judicial Magistrate, Raigarh who in turn committed the case to the Court of Sessions Judge, Raigarh from where learned Additional Sessions Judge, Raigarh, received the same on transfer for trial.

In order to establish the charge against the accused the prosecution has examined as many as 15 witnesses. Statement of the accused under section 313 of the Cr.P.C. was also recorded in which he has denied the material appearing against him in the prosecution case and pleaded his innocence and false implication in the case. He examined Dr. Anand Mohan Gupta DW-1 and Nehrulal DW-2 in his defence. Dr. Anand Mohan Gupta DW-1 has stated in his evidence that on 1.5.1998 he examined the injuries sustained by the accused and found that there was a contusion on his head, swelling and pain on the right wrist and bruises on the right knee. DW-2 Nehrulal has stated in his evidence that the accused was the driver of vehicle of one Kailash Agrawal and from 27.4.1998 to 30.4.1998, they were at Raipur as they took the truck from Raigarh to Raipur.

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आदेश पत्रक (पूर्वानुबद्ध)

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Learned Additional Sessions Judge, after hearing the counsel for the respective parties convicted and sentenced the accused/appellant as mentioned above.

Counsel for the accused/appellant submitted that in this case all the witnesses have turned hostile and there is no evidence to connect the accused with the crime in question. He further submits that the weapon of the offence i.e. axe was sent to the Forensic Science Laboratory, Raipur and as per the report no blood was found on the axe. However, blood was found on the vest (Baniyan) of the accused but there is no report that it was of the blood group of the deceased and thus there is no evidence to connect the accused with the crime in question.

On the other hand, counsel appearing for the respondent/State supported the impugned judgment of the trial Court.

PW-2 Keshav Prasad has turned hostile and has not supported the case of the prosecution. However, he stated that on the fateful night, he was called by the accused and when he went to the place of incident, he saw that Mahesh was lying there and blood was oozing from his mouth and nose. PW-5 Santosh, PW-6 Ramnath and PW-7 Kartikram had not witnessed the incident. They have simply stated that mother of Mamta informed them that the accused Andhu had committed the murder of Mahesh and therefore, document of Ex. P-12 was prepared. Thus, it is clear that these persons had not witnessed the incident. PW-8 Laxmibai,

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आदेश पत्रक (पूर्वानुबद्ध)

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the daughter of the accused has also turned hostile. She, however, has stated she does not know as to who committed the murder of her maternal uncle. PW-9 Rajkumari, wife of the accused has turned hostile and not supported the case of the prosecution. PW-10 Hira Bai is also not the eyewitness to the incident. She has stated that Mamta, Kejabai and Mahesh came and informed her that accused Andhu has assaulted Mahesh. Thus, there is no ocular or direct evidence to connect the accused with the crime in question. Weapon of offence i.e. axe and vest (Baniyan) of the accused were seized under Ex. P-4 and Ex. P-5 based on the memorandum Ex. P-11 given by the accused but as per the FSL report, no blood was found on the axe and the blood was found on the vest (Baniyan) but origin of the blood is not mentioned in the FSL report whether it was the human blood and that too, of the blood group of the deceased. Thus, there is no evidence to connect the accused/appellant with the crime in question and in these circumstances the judgment of the trial Court cannot be sustained.

In the result, the appeal succeeds. Impugned judgment of conviction and sentence passed by the trial Court is set aside. Accused/appellant is acquitted of the charge levelled against him. It is stated that the accused is in detention since 1.5.1998. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.

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